

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1365

Citations Affected: IC 32-29-7-3; IC 36-2-5-13; IC 36-6.

Synopsis: Local government matters. Provides that in the year in which a newly elected county officer takes office, the county fiscal body may change the compensation for holding the county office if: (1) the county officer requests the compensation change or, in the case of the county executive body, a majority of the county executive body requests the change; and (2) the county fiscal body approves the change. Allows township governments to merge upon the adoption of identical resolutions by the township boards (presented to the township boards by the township trustees) and an ordinance by the county legislative body. Allows merged township governments to dissolve the merged government and be reestablished as separate governments upon adoption of an ordinance by the county legislative body. Allows a sheriff to charge a person enforcing a mortgage foreclosure judgment a fee of not more than \$200 for sheriff's sale costs. **(This conference committee report does the following: (1) Removes provisions from EHB 1365 that provided for adoption of the pest control compact, established procedures to obtain funds from the pest control insurance fund, made technical corrections, and repealed a provision exempting groundhogs from application of state fish and wildlife laws. (2) Adds a provision from ESB 322 that allows a county fiscal body to change the compensation for holding office. (3) Adds provisions from SB 638 that provide for the merger of township governments and the dissolution of the merger of township governments. (4) Adds a provision from SB 564 that allows a sheriff to charge a fee to enforce a mortgage foreclosure.)**

Effective: January 1, 2005 (retroactive); July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1365 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning local
- 3 government.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 32-29-7-3 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) In a proceeding
- 7 for the foreclosure of a mortgage executed on real estate, process may
- 8 not issue for the execution of a judgment or decree of sale for a period
- 9 of three (3) months after the filing of a complaint in the proceeding.
- 10 However:
- 11 (1) the period ~~shall be~~ is:
- 12 (A) twelve (12) months in a proceeding for the foreclosure of a
- 13 mortgage executed before January 1, 1958; and
- 14 (B) six (6) months in a proceeding for the foreclosure of a
- 15 mortgage executed after December 31, 1957, but before July 1,
- 16 1975; and
- 17 (2) if the court finds that the mortgaged real estate is residential real
- 18 estate and has been abandoned, a judgment or decree of sale may
- 19 be executed on the date the judgment of foreclosure or decree of
- 20 sale is entered, regardless of the date the mortgage is executed.
- 21 (b) A judgment and decree in a proceeding to foreclose a mortgage
- 22 that is entered by a court having jurisdiction may be filed with the clerk
- 23 in any county as provided in IC 33-32-3-2. After the period set forth in

subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale in at least three (3) public places in each township in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. ~~However,~~ The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe;

1 **under subsection (b).**

2 SECTION 2. IC 36-2-5-13 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

4 Sec. 13. **(a) Except as provided in subsection (b),** the compensation
5 of an elected county officer may not be changed in the year for which
6 it is fixed. The compensation of other county officers, deputies, and
7 employees or the number of each may be changed at any time on:

8 (1) the application of the county fiscal body or the affected officer,
9 department, commission, or agency; and

10 (2) a majority vote of the county fiscal body.

11 **(b) In the year in which a newly elected county officer takes**
12 **office, the county fiscal body may at any time change the**
13 **compensation for holding the county office for that year if:**

14 **(1) the county officer requests the compensation change or, in**
15 **the case of the county executive body, a majority of the county**
16 **executive body requests the change; and**

17 **(2) the county fiscal body votes to approve the change.**

18 SECTION 3. IC 36-6-1.5 IS ADDED TO THE INDIANA CODE AS
19 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
20 1, 2005]:

21 **Chapter 1.5. Merger of Township Governments**

22 **Sec. 1. This chapter does not apply to a township in a county**
23 **containing a consolidated city.**

24 **Sec. 2. As used in this chapter, "former township government"**
25 **means a township government that merges with at least one (1)**
26 **other township government under this chapter.**

27 **Sec 3. As used in this chapter, "new township government"**
28 **means the township government that results from the merger of at**
29 **least two (2) township governments under this chapter.**

30 **Sec. 4. At least two (2) township governments may merge to form**
31 **one (1) township government under this chapter, if:**

32 **(1) the township governments are entirely located within the**
33 **same county;**

34 **(2) all the territory within the township governments is subject**
35 **to the merger; and**

36 **(3) each township whose government is subject to the merger**
37 **is contiguous to at least one (1) other township whose**
38 **government is subject to the merger.**

39 **Sec. 5. (a) The township trustees, with the approval of a majority**
40 **of the members of the township legislative body of each township**
41 **that wants to merge township governments under this chapter must**
42 **comply with this section.**

43 **(b) The township trustees must present identical resolutions**
44 **approving the township government merger to the trustees'**
45 **respective township legislative bodies. A township legislative body**
46 **may adopt a resolution under this chapter only after the legislative**
47 **body has held a public hearing concerning the proposed merger.**
48 **The township legislative body shall hold the hearing not earlier**
49 **than thirty (30) days after the date the resolution is introduced. The**
50 **hearing shall be conducted in accordance with IC 5-14-1.5 and**
51 **notice of the hearing shall be published in accordance with**

1 **IC 5-3-1.**

2 (c) The township legislative bodies may adopt the identical
3 resolutions approving the township government merger under this
4 chapter not later than ninety (90) days after the legislative body has
5 held the public hearing under subsection (b). The townships shall
6 submit the resolutions to the county legislative body of the county
7 within which the townships are located.

8 (d) The county legislative body of the county where the township
9 governments are located must:

10 (1) adopt an ordinance ordering the merger; and

11 (2) file a copy of the ordinance with:

12 (A) the circuit court clerk; and

13 (B) the office of the secretary of state.

14 (e) The county legislative body may not adopt an ordinance
15 ordering a merger after January 1 of a year in which:

16 (1) a general election is held; and

17 (2) a township trustee is elected.

18 (f) The county legislative body may not adopt an ordinance
19 merging township governments less than one (1) year before the
20 merger becomes effective.

21 (g) A merger under this chapter may not reduce the term of a
22 township trustee of a former township government.

23 **Sec. 6. The merger becomes effective when the officers of the new**
24 **township government are elected and qualified. An officer elected**
25 **to represent the merged township government shall be considered**
26 **to be a resident of the territory comprising the new township**
27 **government unless the township merger is dissolved under**
28 **IC 36-6-1.6.**

29 **Sec. 7. If township governments merge under this chapter:**

30 (1) IC 36-6-6 applies to the election of the township board; and

31 (2) IC 36-6-5-1 applies to the election of a township assessor;
32 of the new township government.

33 **Sec. 8. On the date a merger takes effect:**

34 (1) the former township governments are abolished as separate
35 entities;

36 (2) each township subject to the merger retains its geographical
37 boundaries and its name;

38 (3) the territory of the new township government includes all
39 the territory that comprised the territories of the former
40 township governments before the merger;

41 (4) the agencies of the former township governments are
42 abolished;

43 (5) the functions of the abolished agencies are assigned to
44 agencies of the new township government;

45 (6) the:

46 (A) property;

47 (B) records;

48 (C) personnel;

49 (D) rights; and

50 (E) liabilities;

51 related to the functions of the abolished agencies are assigned

1 to agencies of the new township government; and
 2 (7) any bonds and other indebtedness of, or assumed by, the
 3 former township governments are transferred to the new
 4 township government.

5 **Sec. 9. Upon the corporate dissolution of a township government**
 6 **under this article, the following apply for purposes of all state and**
 7 **federal licensing and regulatory laws, statutory entitlements, gifts,**
 8 **grants-in-aid, governmental loans, or other governmental**
 9 **assistance under state or federal statutes, rules, or regulations:**

10 (1) The entire geographic area and population of a new
 11 township government that is established under this chapter
 12 shall be used when calculating and determining the distribution
 13 basis for the following:

14 (A) State or federal government statutory entitlements.

15 (B) Gifts.

16 (C) Grants-in-aid.

17 (D) Loans.

18 (E) Any form of governmental assistance that is not listed in
 19 this subdivision.

20 (2) Following a public hearing for which notice is published in
 21 accordance with IC 5-3-1 at least thirty (30) days before the
 22 public hearing takes place, the executive of a new township
 23 government that is established under this chapter shall
 24 determine and designate to the appropriate state or federal
 25 agency the:

26 (A) geographic areas;

27 (B) parts of roads;

28 (C) segments of population; or

29 (D) combinations of the items listed in clauses (A) through
 30 (C);

31 that constitute rural or urban areas, roads, or populations, if
 32 this designation was previously required of any township that
 33 merges under this chapter.

34 **Sec. 10. When a new township government is established under**
 35 **this chapter, the following occur:**

36 (1) The resolutions, rules, and bylaws of each of the former
 37 township governments:

38 (A) remain in force within the territory to which they applied
 39 before the merger; and

40 (B) continue in force until amended or repealed by the
 41 legislative body or an administrative body of the new
 42 township government.

43 (2) Pending actions that involve any former township
 44 government shall be prosecuted to final judgment and
 45 execution, and judgments rendered in those actions may be
 46 executed and enforced against the new township government
 47 without any change of the name of the plaintiff or defendant.

48 **Sec. 11. (a) On the date the formation of a new township**
 49 **government takes effect, all money in the funds of each of the**
 50 **former township governments is transferred to the new township**
 51 **government. The new township government:**

(1) shall deposit the money in its funds that most closely correspond to the funds of the former township governments; and

(2) may use the money to pay its operational and capital costs for the balance of the calendar year.

(b) After the date the formation of a new township government takes effect, the new township government is entitled to receive all distributions of taxes and other revenue that would have been made to the former township governments if the merger had not occurred. The new township government shall deposit the money in its funds that correspond most closely to the funds of the former township governments into which the taxes or other revenue would have been deposited if the merger had not occurred.

Sec. 12. The officers of the new township government shall:

(1) obtain from the department of local government finance approval under IC 6-1.1-18.5-7 of:

(A) a budget;

(B) an ad valorem property tax levy; and

(C) a property tax rate;

(2) fix the annual budget under IC 6-1.1-17;

(3) impose a property tax levy; and

(4) take any action necessary to ensure the collection of fees and other revenue;

for the new township government for the budget year following the year the officers take office.

SECTION 4. IC 36-6-1.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 1.6. Dissolution of a Township Government Merger

Sec. 1. As used in this chapter, "merged township government" means the township government that results from the merger of at least two (2) township governments under IC 36-6-1.5.

Sec. 2. As used in this chapter, "reestablished township government" means a township government that:

(1) merged with at least one (1) other township government under IC 36-6-1.5; and

(2) is reestablished as a separate township government under this chapter.

Sec. 3. (a) Freeholders may initiate proceedings to reestablish a township government by filing a petition in the office of the county auditor of the county where the freeholder's land is located. The petition must be signed by the lesser of:

(1) at least ten percent (10%) of; or

(2) at least fifty (50);

freeholders owning land within the proposed reestablished township. A petition may also be filed with the county auditor by a merged township government under a resolution adopted by the legislative body of the township government.

(b) A county legislative body may adopt an ordinance that:

(1) dissolves a merger of township governments that took effect under IC 36-6-1.5; and

(2) reestablishes the township governments that were subject to the merger.

(c) The county legislative body must file a copy of the ordinance with:

- (1) the circuit court clerk; and
- (2) the secretary of state.

Sec. 4. (a) A county legislative body may not adopt an ordinance ordering a dissolution under section 3 of this chapter after January 1 of a year in which:

- (1) a general election is held; and
- (2) a township trustee is elected.

(b) The county legislative body may not adopt an ordinance ordering a dissolution under section 3 of this chapter less than one (1) year before the dissolution takes effect.

(c) A dissolution under this chapter may reduce the term of the township trustee of the merged township government.

Sec. 5. A dissolution under an ordinance adopted under section 3 of this chapter becomes effective when the officers of the reestablished township governments are elected and qualified as set forth in IC 36-6.

Sec. 6. (a) On the date on which a dissolution under an ordinance adopted under section 3 of this chapter takes effect:

- (1) the reestablished township governments are established as separate entities;
- (2) the territory of the reestablished township government is the same as the territory that comprised the reestablished township government before the merger;
- (3) the agencies of the merged township government are abolished and the agencies of the reestablished township governments are established;
- (4) the functions of the abolished agencies are assigned to agencies of each reestablished township government;
- (5) the:
 - (A) property;
 - (B) records;
 - (C) personnel;
 - (D) rights; and
 - (E) liabilities;

related to the functions of the abolished agencies are assigned to agencies of the reestablished township governments; and

- (6) any bonds and other indebtedness of, or assumed by, the merged township government is the indebtedness of the reestablished township governments.

(b) The county legislative body shall determine the distribution of property, records, and personnel to the reestablished township governments under subsection (a)(5).

Sec. 7. Upon the corporate dissolution of a merged township government under this article, the following apply for purposes of all state and federal licensing and regulatory laws, statutory entitlements, gifts, grants-in-aid, governmental loans, or other governmental assistance under state or federal statutes, rules, or

1 regulations:

2 (1) The entire geographic area and population of a
3 reestablished township government created under this chapter
4 shall be used when calculating and determining the distribution
5 basis for the following:

6 (A) State or federal government statutory entitlements.

7 (B) Gifts.

8 (C) Grants-in-aid.

9 (D) Loans.

10 (E) Any form of governmental assistance that is not listed in
11 this subdivision.

12 (2) Following a public hearing for which notice is published in
13 accordance with IC 5-3-1 at least thirty (30) days before the
14 public hearing takes place, the executive of each reestablished
15 township government that is created under this chapter shall
16 determine and designate to the appropriate state or federal
17 agency the:

18 (A) geographic areas;

19 (B) parts of roads;

20 (C) segments of population; or

21 (D) combinations of the items listed in clauses (A) through
22 (C);

23 that constitute rural or urban areas, roads, or populations, if
24 this designation was previously required of the merged
25 township government.

26 Sec. 8. When a reestablished township government is created
27 under this chapter, the following occur:

28 (1) The resolutions, rules, and bylaws of the merged township
29 government:

30 (A) remain in force in the reestablished township
31 governments; and

32 (B) continue in force until amended or repealed by the
33 legislative body or an administrative body of the
34 reestablished township government.

35 (2) Pending actions that involve the merged township
36 government shall be prosecuted to final judgment and
37 execution, and judgments rendered in those actions may be
38 executed and enforced against the reestablished township
39 governments without any change of the name of the plaintiff or
40 defendant.

41 Sec. 9. (a) On the date on which the formation of a reestablished
42 township government takes effect under this chapter, all money in
43 the funds of the merged township government is transferred to the
44 reestablished township governments. The county legislative body
45 shall determine the allocation of the funds to the reestablished
46 township governments. The reestablished township governments:

47 (1) shall deposit the money in the funds that most closely
48 correspond to the funds of the merged township government;
49 and

50 (2) may use the money to pay operational and capital costs for
51 the balance of the calendar year.

(b) After the date on which the formation of a reestablished township government takes effect under this chapter, the reestablished township government is entitled to receive all distributions of taxes and other revenue that would have been made to the new township government if the merger had not occurred. The allocation of the distributions to the reestablished township governments shall be determined by the county legislative body. A reestablished township government shall deposit the money in its funds that correspond most closely to the funds of the merged township government into which the taxes or other revenue would have been deposited if the dissolution had not occurred.

Sec. 10. The officers of a new reestablished township government shall:

(1) obtain from the department of local government finance approval under IC 6-1.1-18.5-7 of:

(A) a budget;

(B) an ad valorem property tax levy; and

(C) a property tax rate;

(2) fix the annual budget under IC 6-1.1-17;

(3) impose a property tax levy; and

(4) take any action necessary to ensure the collection of fees and other revenue;

for the new township government for the budget year following the year the officers take office.

SECTION 5. IC 36-6-5-1, AS AMENDED BY SEA 308-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A township assessor shall be elected under IC 3-10-2-13 by the voters of each township having:

(1) a population of more than eight thousand (8,000); or

(2) an elected township assessor or the authority to elect a township assessor before January 1, 1979.

(b) A township assessor shall be elected under IC 3-10-2-14 in each township having a population of more than five thousand (5,000) but not more than eight thousand (8,000), if the legislative body of the township:

(1) by resolution, declares that the office of township assessor is necessary; and

(2) the resolution is filed with the county election board not later than the first date that a declaration of candidacy may be filed under IC 3-8-2.

(c) A township government that is created by merger under IC 36-6-1.5 shall elect only one (1) township assessor under this section.

~~(c)~~ **(d)** The township assessor must reside within the township as provided in Article 6, Section 6 of the Constitution of the State of Indiana. The assessor forfeits office if the assessor ceases to be a resident of the township.

~~(d)~~ **(e)** The term of office of a township assessor is four (4) years, beginning January 1 after election and continuing until a successor is elected and qualified. However, the term of office of a township assessor elected at a general election in which no other township officer

is elected ends on December 31 after the next election in which any other township officer is elected.

SECTION 6. IC 36-6-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as provided in subsection (b) **and section 2.1 of this chapter**, a three (3) member township board shall be elected under IC 3-10-2-13 by the voters of each township.

(b) The township board in a county containing a consolidated city shall consist of seven (7) members elected under IC 3-10-2-13 by the voters of each township.

(c) The township board is the township legislative body.

(d) The term of office of a township board member is four (4) years, beginning January 1 after election and continuing until a successor is elected and qualified.

SECTION 7. IC 36-6-6-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.1. (a) This section applies if township governments merge under IC 36-6-1.5.**

(b) If two (2) township governments merge, the resulting merged township government shall elect a three (3) member township board. The voters of the resulting merged township government shall elect all the members of the township board. One (1) member must reside within the boundaries of each of the township governments that merged.

(c) If at least three (3) township governments merge, the resulting merged township government shall elect a township board that has the same number of members as the number of township governments that merged. The voters of the resulting merged township shall elect all the members of the township board. One (1) township board member must reside within the boundaries of each of the townships that merged.

SECTION 8. IC 36-6-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) This subsection applies to townships in a county containing a consolidated city. One (1) member of the legislative body must reside within each legislative body district. If a member of the legislative body ceases to be a resident of the district from which the member was elected, the office becomes vacant.

(b) This subsection applies to townships not included in subsection (a) **or (c)**. A member of the legislative body must reside within the township as provided in Article 6, Section 6 of the Constitution of the State of Indiana. If a member of the legislative body ceases to be a resident of the township, the office becomes vacant.

(c) This subsection applies to a township government that:

(1) is created by a merger of township governments under IC 36-6-1.5; and

(2) elects a township board under section 2.1 of this chapter.

One (1) member of the legislative body must reside within the boundaries of each of the former townships that merged. If a member of the legislative body ceases to be a resident of that former township, the office becomes vacant.

SECTION 9. IC 36-6-6-4 IS AMENDED TO READ AS FOLLOWS

1 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as provided in
2 ~~subsection~~ **subsections (b) and (c)**, two (2) members of the legislative
3 body constitute a quorum.

4 (b) Four (4) members of the legislative body in a county containing
5 a consolidated city constitute a quorum.

6 **(c) This subsection applies to a township government that:**

7 **(1) is created by a merger of township governments under**
8 **IC 36-6-1.5; and**

9 **(2) elects a township board under section 2.1 of this chapter.**

10 **A majority of the members of the legislative body constitute a**
11 **quorum. If a township board has an even number of members, the**
12 **township executive shall serve as an ex officio member of the**
13 **township board for the purpose of casting the deciding vote to**
14 **break a tie.**

15 **SECTION 10. An emergency is declared for this act.**

(Reference is to EHB 1365 as printed March 23, 2005.)

Conference Committee Report
on
Engrossed House Bill 1365

Signed by:

Representative Friend
Chairperson

Senator Weatherwax

Representative Bischoff

Senator Lewis

House Conferees

Senate Conferees